

REMARKS

Claims 23-37 are pending in this case. Claims 23-33 stand rejected under 35 U.S.C. § 112, first paragraph, for lack of enablement. Claims 23-30 stand rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness. These rejections are addressed below.

Rejections under 35 U.S.C. § 112, first paragraph

Claims 23-33 stand rejected under 35 U.S.C. § 112, first paragraph, for lack of enablement. As a basis for rejection, the Office asserts that these method claims lack enablement with respect to treating asthma. In particular, the Office Action at page 2 states:

The examiner does not agree with the applicants arguments that the specification is enabling for treating every known pathology associated with the constriction of smooth muscle cells. Based on the teachings in the instant specification, it is enabling only for treating arterial hypertension and not any other disorder. The applicants have not provided any evidence that compounds known to treat arterial hypertension are also well known to have therapeutic utility for treating asthma or vice versa.

Applicants respectfully disagree and address this rejection by providing the Office with the requested evidence and with the following remarks.

Applicants have discovered that benzo[c]quinolizinium compounds are capable of relaxing smooth muscle cells (see, for example, the specification at page 2, lines 3-15). It is this relationship between benzo[c]quinolizinium compounds and relaxation of smooth muscle cells that is the basis for concluding that benzo[c]quinolizinium compounds can be useful for the treatment of disorders associated with the constriction of smooth muscle cells, such as arterial hypertension and asthma.

With respect to the treatment of conditions associated with bronchoconstriction, such as asthma, Applicants submit herewith the Declaration of Frederic Becq under 37 C.F.R. § 1.132 (hereafter “the Declaration”) containing data showing that benzo[c]quinolizinium compounds do relax constricted bronchi as stated in the pending

application at paragraphs 4-6.

Accordingly, Applicants submit that the specification alone is sufficient to enable one of skill in the art to use benzo[c]quinolizinium compounds for the treatment of any condition associated with the constriction of smooth muscle cells, including arterial hypertension and asthma.

In view of the Declaration and the remarks above, Applicants request that the rejections for lack of enablement be withdrawn.

Rejections under 35 U.S.C. § 112, second paragraph

Claims 23-30 stand rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness. As a basis for this rejection, the Office asserts that (i) the use of the term “comprising” with respect to the markush group of R₇, R₈, R₉, and R₁₀ is indefinite; and (ii) the term “in particular a butyl group” with respect to the markush group of R₅ is indefinite. Applicants have addressed this rejection by amendment of claim 23.

Claim 23 has been amended with respect to the markush group of R₇, R₈, R₉, and R₁₀ to recite “each of R₇, R₈, R₉, and R₁₀ is, independently, a hydrogen, chlorine, bromine, or fluorine atom.” With this amendment the claim term “comprising” has been removed. Claim 23 has also been amended with respect to the markush group of R₅ to remove the term “in particular a butyl group.”

Applicants note that the scope of claim 23 is unchanged over the previous version of the claim. Support for claim 23 as presently amended is found in claim 2 as filed and in the specification from page 5, line 20, to page 6, line 10.

In view of the amendment to the claim 23, Applicants request that the rejection for indefiniteness be withdrawn.

CONCLUSION

Applicants submit that this case is now in condition for allowance, and such action is respectfully requested.


Enclosed is a Petition to extend the period for replying to the Office action for two months, to and including March 30, 2009, as March 29, 2009, was a Sunday, and a check in payment of the required extension fee.

To expedite prosecution Applicants request a telephonic interview with the Examiner to discuss any remaining rejections. The Examiner is invited to call the undersigned at 617-428-0200.

If there are any additional charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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